

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 05-0006**  
**Withholding Tax**  
**For 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I.     Withholding Tax.**

**Authority:**     IC 6-3-4-8(a); 26 U.S.C.S. § 3401(a); 26 U.S.C.S. § 3401(c); 26 U.S.C.S. § 3402(a); Treas. Reg. § 31.3401(c)-1(c); Treas. Reg. § 31.3401(d); 2005 U.S. Master Tax Guide (CCH 2005).

Taxpayer maintains that he is not required to withhold income tax from wages paid to his employees.

**II.    Involuntary Servitude.**

**Authority:**     U.S. Const. amend. XIII, § 1; Porth v. Brodrick, 214 F.2d 925 (10<sup>th</sup> Cir. 1954); Abney v. Campbell, 206 F.2d 836 (5<sup>th</sup> Cir. 1953).

Taxpayer argues that requiring him to withhold tax from his employees is a form of involuntary servitude forbidden by the Thirteenth Amendment to the Constitution.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident who has people working for him. The Department of Revenue (Department) found that taxpayer had failed to withhold state income tax from the money taxpayer paid to his employees. Therefore, the Department sent taxpayer a "Delinquency Notice." The "Delinquency Notice" stated that taxpayer failed to pay required withholding taxes. Taxpayer disagreed with the Department's decision and submitted a protest letter to that effect.

Upon assignment to the Hearing Officer, taxpayer was notified of his opportunity to take part in an administrative hearing and to further explain the basis for his protest. Taxpayer chose not to respond. Taxpayer was notified a second time and was provided a second opportunity to schedule the hearing. Taxpayer again chose not to respond. Consequently, this Letter of Findings was written based entirely upon taxpayer's written protest letter.

## **DISCUSSION**

### **I. Withholding Tax.**

Taxpayer maintains that he is not required to withhold taxes from wages paid to his employees. Taxpayer states that a “[W]-4 form is needed to legally allow for any withholding. [W]ithout a properly signed [W]-4 it is a criminal act to withhold a citizens funds if they live and work the 50 states.” Taxpayer claims that the Department is asking him “to commit theft.” In support of his position, taxpayer has attached Issue Number 233 of the “Membership Newsletter of the Save-A-Patriot Fellowship.”

Insofar as an employer’s obligation to withhold taxes, IC 6-3-4-8(a) states in part:

Except as provided in subsection (d) or (l), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department.

Each Indiana employer becomes liable for any amount of taxes withheld. IC 6-3-4-8(a) states in part that each “employer making payments of any wages . . . shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section . . . .”

Pursuant to IC 6-3-4-8(a), if an employer is required by the Internal Revenue Code to withhold federal taxes, that employer must do the same for state income tax purposes.

26 U.S.C.S. § 3402(a) states that, “In general. Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary.” “Withholding income tax by an employer is required on each of an employee’s wage payments.” 2005 U.S. Master Tax Guide para. 2601, p, 690 (CCH 2005). 26 U.S.C.S. § 3401(a) states that, “For purposes of this chapter [26 USCS §§ 3401 et seq.], the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer . . . .” The term “employer” includes not only individuals and organizations engaged in a trade or business, but also organizations exempt from income, social security, and unemployment taxes. Treas. Reg. § 31.3401(d). Withholding also applies to wages and salaries of employees, corporate officers, or elected officials of federal, state, and local governmental entities. 26 U.S.C.S. § 3401(c).

Taxpayer points to 26 U.S.C.S. § 3402(p) in support of his contention that the withholding of taxes is voluntary. Taxpayer is correct to the extent that certain specified payments are subject to voluntary withholding. However, the withholding of taxes from ordinary wages is not “voluntary.” “Taxpayers may request voluntary withholding from certain federal payments other than wages. Payments subject to voluntary withholding include social security benefits, crop

disaster payments, Commodity Credit Corporation loans, and any other payments to be specified in regulations by the IRS.” 2005 U.S. Master Tax Guide para. 2601, p, 694 (CCH 2005). *See* Treas. Reg. § 31.3401(c)-1(c). Therefore, if an individual employee is receiving one of these designated payments in *addition* to his regular salary, the employee may voluntarily request that his employer withhold an additional amount from his regular paycheck.

The Internal Revenue Code requires that every employer withhold federal taxes from employees’ wages. The Indiana Code requires that every employer subject to the federal withholding law simultaneously withhold state income taxes. Neither the federal nor state withholding requirement is “voluntary.”

### **FINDING**

Taxpayer’s protest is denied.

## **II. Involuntary Servitude.**

Taxpayer asserts his “rights not to be an unpaid tax collector which the [T]hirteenth [A]mendment guarantees protection from involuntary servitude.”

U.S. Const. amend. XIII, § 1 states that “Neither slavery nor involuntary servitude except as a punishment from crime whereof the party shall have been convicted shall exist within the United States, or any place subject to their jurisdiction.”

There is nothing which supports taxpayer’s contention that requiring taxpayer to withhold state income taxes equate to “slavery” or “involuntary servitude.” As explained by the Court of Appeals for the Tenth Circuit, “If the requirements of the tax laws were to be classed as servitude, they would not be the kind of involuntary servitude referred to in the Thirteenth Amendment.” Porth v. Brodrick, 214 F.2d 925, 926 (10<sup>th</sup> Cir. 1954). The court further held that the petitioner’s claim to the contrary was, “unsubstantial and without merit” as well as “far-fetched and frivolous.” Id.

The Department is unable to agree with taxpayer’s claim that requiring him to comply with the withholding requirement equates to a form of servitude. The enforcement of the withholding requirement is not the imposition of servitude. It is the collection of a tax and the enforcement of an obligation which, under well-settled law, the taxpayer may be lawfully subjected to. The enforcement of the law imposing state income tax is not a violation of the Thirteenth Amendment. *See* Abney v. Campbell, 206 F.2d 836, 841 (5<sup>th</sup> Cir. 1953).

### **FINDING**

Taxpayer’s protest is denied.